

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

WALTER CALLIHAN

COMPLAINANT

v.

KENTUCKY POWER COMPANY

DEFENDANT

CASE NO. 93-329

O R D E R

On September 3, 1993, Walter Callihan filed a complaint against Kentucky Power Company ("Kentucky Power") that it had wrongfully terminated his electric service. The Commission, by Order of September 17, 1993, directed Kentucky Power to either satisfy the matters in the complaint or file a written answer within ten days of the date of the Order. On September 27, 1993, Kentucky Power responded by admitting that it had disconnected electric service to Walter Callihan, but denied that its actions were wrongful. A hearing was held on the complaint before the Commission on November 12, 1993, at which both parties appeared, but only Kentucky Power was represented by counsel.

FINDINGS OF FACT

Kentucky Power owns, controls, and operates facilities used for, or in connection with, the generation, transmission, or distribution of electricity to or for the public for compensation

for light, heat, power, or other uses. Walter Callihan owns a fruit stand which is located on U.S. Highway 23 in Greenup, Kentucky and was within Kentucky Power's service territory. On August 6, 1993, Kentucky Power terminated service to the fruit stand by disconnecting and removing the electric meter.

Kentucky Power bills its customers monthly for service. When Kentucky Power discontinued his service, Walter Callihan owed the utility for service for the months of April, May, June, and July. His total arrearage through August 6, 1993 was \$44.34.

To secure payment of its bills, Kentucky Power requires a cash deposit from its customers equal to twice the customers estimated monthly bill. Kentucky Power Tariff 1st Revised Sheet No. 2-2. In Mr. Callihan's case, Kentucky Power required a deposit of \$45.00. When Kentucky Power discontinued Mr. Callihan's service, the amount on deposit, including accrued interest, was \$46.58. Kentucky Power applied this amount to the arrearage and refunded the difference, the sum of \$2.24.

Before terminating his service, Kentucky Power advised Mr. Callihan on his bills for the months of May through July that his account was in arrears. Additionally, on July 23, 1993, Kentucky Power notified Walter Callihan in writing that his electric service would be discontinued if the arrearage was not paid within ten days. Believing that he had an agreement with Kentucky Power that his deposit would automatically be applied to his account until depleted and that upon depletion Kentucky Power would request another deposit, Mr. Callihan ignored the notices. Kentucky Power

denies the existence of such agreement. Kentucky Power's tariff, moreover, disclaims such arrangement (see Kentucky Power Tariff 1st Revised Sheet No. 2-2 ("Retention by the Company, prior to any prior settlement of any deposit or guaranty is not a payment or part payment of any bill for service.))).

CONCLUSIONS OF LAW

Walter Callihan maintains that by disconnecting service, Kentucky Power breached its agreement with him. Kentucky Power denies the existence of such agreement. The existence of such agreement is irrelevant as it is unlawful.

Kentucky Power is an electric utility subject to regulation by this Commission. KRS 278.040. As a utility, it is required to operate in accordance with the provisions of KRS Chapter 278 and the rules and regulations promulgated by this Commission under the authority of that chapter. Id.

KRS 278.160 requires each utility to file with this Commission schedules of its rates and conditions of service, commonly referred to as its tariff. Furthermore, KRS 278.170 prohibits a utility from giving preferential treatment to any person or customer. The alleged agreement is invalid not only because it is contrary to Kentucky Power's filed tariff, but also because it provides a benefit to him not otherwise available to Kentucky Power customers. Therefore, the disconnection of service for failure to pay the electric bills and arrears was proper and the complaint should be dismissed.

This Commission being otherwise sufficiently advised,
IT IS ORDERED that the complaint is dismissed.
Done at Frankfort, Kentucky, this 22nd day of February, 1994.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director